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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1313**

Daniel L. Hardman,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed May 29, 2012
Affirmed
Kalitowski, Judge**

Department of Employment and Economic Development
File No. 27501482-2

Daniel L. Hardman, Brooklyn Park, Minnesota (pro se relator)

Lee B. Nelson, Department of Employment and Economic Development, St. Paul,
Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Schellhas, Judge; and
Randall, Judge.*

UNPUBLISHED OPINION

KALITOWSKI, Judge

Relator Daniel L. Hardman challenges the decision of an unemployment-law
judge (ULJ) that he was overpaid unemployment benefits. We affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

D E C I S I O N

When reviewing a decision of a ULJ, this court may affirm, remand for further proceedings, or reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are “made upon unlawful procedure . . . affected by other error of law,” or “unsupported by substantial evidence in view of the entire record as submitted.” Minn. Stat. § 268.105, subd. 7(d) (2010).

Relator was laid off from his employment with Ace Hardware Corporation on December 4, 2008. Relator established a Minnesota standard unemployment insurance benefits account effective February 22, 2009, with a weekly benefit amount of \$566. Relator exhausted his state account in September 2009 and began receiving federal emergency unemployment compensation, which he collected until December 14, 2010. Relator then collected federal extended benefits until March 3, 2011.

Relator obtained temporary employment with Insight Global Inc. (Insight) from August 16, 2010, to November 30, 2010, working as an information technology consultant at a rate of \$18 per hour. Relator had third-quarter 2010 earnings from Insight in the amount of \$2,988 and fourth-quarter 2010 earnings in the amount of \$6,932.25. Relator appropriately reported these wages to the Minnesota Department of Employment and Economic Development (DEED) in his weekly requests for continued benefits.

DEED reviews the wage detail reports of federal-emergency or extended-benefits recipients quarterly to determine whether they are eligible to establish a new state account. In March 2011, DEED determined that relator was eligible to establish a new

state account with a weekly benefit amount of \$266 retroactively to January 2, 2011, based on relator's third- and fourth-quarter 2010 earnings. As a result, DEED determined that relator was no longer an "exhaustee" of state benefits, and was therefore not eligible to receive federal extended benefits on the previous account as of that date. DEED further determined that the \$3,962 in federal extended benefits relator received for the weeks from January 2, 2011, to February 19, 2011, constituted an overpayment that must be repaid. Relator appealed this determination and the ULJ determined that relator had been overpaid \$3,962 in federal extended benefits and ordered relator to repay that amount to the Minnesota Unemployment Insurance Trust Fund. Relator requested reconsideration, and the ULJ affirmed.

I.

Relator first argues that the ULJ's overpayment determination is erroneous because the ULJ applied the wrong base period. He contends that the base period should have begun on February 6, 2010, because that was the date his original state benefits account expired, and that application of a base period beginning on February 6 would have significantly reduced his overpayment. We disagree.

If an applicant collects the entire amount of unemployment benefits before the end of the benefit year, the applicant may be eligible to receive federal extended unemployment benefit payments. *Voge v. Dep't of Emp't & Econ. Dev.*, 794 N.W.2d 662, 665 (Minn. App. 2011). The federal emergency and extended benefits programs provide a recipient with weekly benefit payments at the same weekly rate the applicant received prior to the exhaustion of the recipient's state unemployment benefits. *Id.* To

be eligible to receive federal benefits, an applicant must be an “exhaustee,” meaning that the applicant has received the “maximum amount of regular unemployment benefits” within a benefits year or “has insufficient wage credits to establish a new benefit account.” Minn. Stat. § 268.115, subds. 1(7), 3 (2010). “An applicant is no longer an exhaustee, however, if the applicant earns enough ‘wage credits’ during the current unemployment benefit year to become eligible to establish a second unemployment benefit account after the first unemployment benefit year expires.” *Voge*, 794 N.W.2d at 665.

To establish a benefit account, an applicant must earn a minimum number of “wage credits.” Minn. Stat. § 268.07, subd. 2(a) (2010). “Wage credits” are defined as “the amount of wages paid within an applicant’s base period for covered employment.” Minn. Stat. § 268.035, subd. 27 (2010). When determining whether an applicant has earned the minimum amount of wage credits, the applicant’s base period is generally “the last four completed calendar quarters before the effective date of an applicant’s application for unemployment benefits if the application has an effective date occurring after the month following the last completed calendar quarter.” Minn. Stat. § 268.035, subd. 4(a) (2010). But a secondary base period applies to applications for benefits effective “during the month following the last completed calendar quarter,” and covers “the first four of the last five completed calendar quarters before the effective date of an applicant’s application” for benefits. *Id.*, subd. 4(b) (2010). “If the applicant has insufficient wage credits to establish a benefit account using the secondary base period under paragraph (b), an alternate base period of the last four completed calendar quarters

before the effective date of the applicant's application for unemployment benefits will be used." *Id.*, subd. 4(d) (2010).

To establish a new benefit account "within 52 calendar weeks following the expiration of the benefit year on a prior benefit account, an applicant must," using the secondary base period under section 268.035, subdivision 4, have wage credits in the high quarter of \$1,000 or more and "must have performed services in covered employment in a calendar quarter that started after the effective date of the prior benefit account. The wage credits for those services must be at least eight times the weekly benefit amount on the prior benefit account." Minn. Stat. § 268.07, subd. 2 (2010).

Here, relator's application for benefits was effective January 2, 2011. Therefore, we first apply the secondary base period from October 1, 2009, through September 30, 2010, which includes the third quarter of 2010. *See* Minn. Stat. § 268.035, subd. 4(b). Relator earned \$2,988 during the third quarter of 2010, which exceeds the required \$1,000 high-quarter threshold, but is not more than eight times his weekly benefit amount of \$566. Because relator had insufficient wage credits under his secondary base period, we apply the alternate base period of the last four completed calendar quarters, from January 1 to December 31, 2010. *See* Minn. Stat. § 268.035, subd. 4(d). Relator meets the requirements for establishing a new account under the alternate base period because he earned \$2,988 in the third quarter of 2010 and \$6,932.25 in the fourth quarter, exceeding the high-quarter thresholds under section 268.07, subdivision 2(a)(1), and totaling more than eight times the amount of his weekly benefit of \$566 under section 268.07, subdivision 2(b).

Because relator was eligible for a new state account effective January 2, 2011, he was not entitled to receive extended benefits after that date, and any extended benefits he received after that date resulted in an overpayment, regardless of when his federal benefits account was scheduled to expire. Because relator continued to receive \$566 per week for seven weeks after January 2, 2011, this resulted in an overpayment of \$3,962. An applicant who receives benefits to which he or she is not entitled must promptly repay the benefits to the trust fund. Minn. Stat. § 268.18, subd. 1(a) (2010). We conclude that the ULJ properly determined that relator received benefits to which he was not entitled and therefore, is required to repay \$3,962 to the trust fund.

II.

Relator argues that he received inconsistent determinations from DEED, one stating he had been overpaid \$3,962 in benefits and one stating he had been underpaid \$300 in benefits. He contends that these two determinations cannot be reconciled. We disagree.

The overpayment determination concerned the benefits account relator established as a result of his separation from Ace Hardware, while the underpayment notification appears to concern the benefits account relator established as a result of his separation from Insight. Relator was entitled to benefits on the Insight account for weeks during which he had filed a continued request for benefits, but those benefits had not yet been paid. Therefore, DEED issued a determination of underpayment. Because the two determinations relate to different accounts, they are not in conflict. Thus, we reject relator's contention that these two determinations cannot be reconciled.

III.

Finally, relator argues that DEED should be bound by the boilerplate language in the ULJ's decision on reconsideration that states "It is ordered" that "[t]his decision results in an overpayment of unemployment benefits in the amount of \$0.00." We disagree.

It is understandable that relator would be confused by this boilerplate language because this language appears to conflict with the rest of the ULJ's order explaining that relator was overpaid benefits. But the ULJ's order on reconsideration affirms the findings and decision of his initial findings of fact and decision. The findings of fact and decision explained that relator was not entitled to federal extended benefits between January 2 and February 19, 2011, and states that relator "was overpaid benefits in the total amount of \$3[,]962."

The ULJ's determination that relator was overpaid benefits in the amount of \$3,962 is supported by substantial evidence in view of the whole record, while the language in the order on reconsideration stating that "[t]his decision results in an overpayment of unemployment benefits in the amount of \$0.00" is not supported by substantial evidence. Thus, inclusion of the zero-overpayment language appears to be an administrative error. Because there is substantial evidence in the record to support the ULJ's finding that relator was overpaid benefits in the amount of \$3,962, we decline to give effect to the zero-overpayment language.

Affirmed.